

REMARKS

The claims have been amended to better define the claimed invention and better distinguish the claimed invention from the prior art. More particularly, independent claims 1 and 9 have been amended to specify the amount of caffeine added is below the amount that would effect flavor, namely 35.5 to 1000 parts per million by weight by the finished product. Support is found on page 4 lines 7-8 and 20-22 of the original specification. No new matter has been entered.

Turning to the art rejections and considering first the rejection of claims 1, 3-6, 9 and 10-14 as anticipated by JP '533, as noted supra, independent claims 1 and 9 cite specific amount of addition of caffeine which is below the amount that would effect flavor. JP '533 teaches a tea flavored beverage in which 2-4 grams (by weight of tea powder) is added per liter of beverage. Applicant's independent claims 1 and 9, as amended, specify that the amount of caffeine added is 35.5 to 1000 parts per million by weight of the finished product and that the amount of caffeine added does not effect flavor. Thus, independent claims 1 and 9 cannot be said to be anticipated by JP '533. Claims 3-6 and 10-14 which depend directly or indirectly on claims 1 or 9, as the case may be, also cannot be said to be anticipated by JP '533 for the same reasons above adduced relative to claims 1 and 9, and as well as for their own additional limitations.

Moreover, Applicant's claims cannot be said to be obvious from JP '533 since JP '533 specifically is concerned with producing a beverage with a green tea flavor, while Applicant's claims all are directed to producing a brewed alcoholic malt beverage in which the amount of caffeine added is insufficient to effect flavor.

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

Turning to the rejection of claims 1-6¹ and 9-13 as anticipated by JP '113, JP '113, like JP '533 is concerned with producing a beverage having a tea flavor. The primary difference between JP '113 and JP '533 is that JP '113 is concerned with producing a black tea-flavored beverage, while JP '533 is concerned with producing a green tea flavored beverage. As noted supra, Applicant's claimed invention involves adding caffeine in an amount below the amount that would effect flavor, namely 35.5 to 1000 parts per million by weight of the finished beverage. Thus, JP '113 also fails to teach, or for that matter suggest independent claims 1 and 9 or any of the claims dependent thereon. Accordingly, claims 1, 3-6 and 9-13 cannot be said to be anticipated by or obvious from JP '113.

Turning to the rejection of claims 7, 8, 15 and 16 as obvious from JP '533 in view of Ramirez, claims 7 and 8 are directly or indirectly dependent on claim 1, and claims 15 and 16 are directly or indirectly dependent on claim 9. The deficiencies of the primary reference, JP '113 vis-à-vis claims 1 and 9 are discussed above. It is submitted the secondary reference Ramirez does not supply the missing teaching to JP '533 to achieve or render obvious claims 1 and 9 or claim 7 and 8 and 15 and 16 which depend thereon. Ramirez is concerned with the production of a non-alcoholic beer. Applicant's claims are directed to a brewed alcoholic malt beverage. Ramirez goes to great lengths to describe contra-indications to alcohol, and describes in detail of the removal of ethanol from his beverage. Thus, it is submitted Ramirez teaches against the addition of caffeine to an alcoholic beverage, and, it is submitted one skilled in the art wishing to produce an alcoholic beverage would not look to Ramirez.

Moreover, the Examiner's reliance on paragraph 0091 of Ramirez is not well based in any event. All that Ramirez teaches at paragraph 0091 is a recommended dose of caffeine of

¹ Claim 2 has been canceled.

100-200 mg every 3-4 hours for use as a stimulant. There is no teaching or suggestion within the four corners of Ramirez that the addition of any amount of caffeine to a brewed alcoholic beverage would improve foaming properties without adding flavor as required by Applicant's independent claims 1 and 9. Rather, Ramirez is a non-alcoholic beer in which ethanol is removed by extraction, and caffeine then added along with a variety of other components. Thus, Ramirez cannot be said to be a brewed alcoholic beverage as required by Applicant's claimed invention. Moreover, Ramirez specifically teaches addition of caffeine, along with several other ingredients, after the beer is brewed and subjected to extraction to remove the alcohol. Thus the primary reference Ramirez is quite different from Applicant's claimed invention.

Redbull, which has been cited for the proposition that caffeine may be contained in many foodstuffs is acknowledged as so teaching. However, noticeably missing from Redbull is a suggestion that caffeine be added to a naturally brewed alcoholic malt beverage as required by Applicant's claims. In fact, Redbull nowhere mentions a malt beverage.

Accordingly, in view of the contraindications and distinctions in the prior art, it is submitted that no combination of JP '533 and Ramirez, or JP '533, Ramirez and Redbull would achieve or render obvious claim 1 or claim 9 or any of the claims dependent thereon. Thus, the rejection of claims 7-8 and 15-16 as obvious from JP '533 in view of Ramirez and Redbull also is in error.

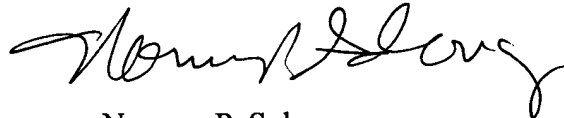
HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

Having dealt with all the objections raised by the Examiner, the Application is believed to be in order for allowance.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,



Norman P. Soloway
Attorney for Applicant
Reg. No. 24,315

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 11, 2006, at Tucson, Arizona.

NPS:kmg

By 

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567